

REMARKS

The claims have been amended to more clearly describe the subject matter of the invention.

Claims 6, 11, 22, 26, 32 and 37-39 have been cancelled.

Claim 2 and 18 have been amended by inserting the antiviral “foscarnet,” which was particularly recited in dependent claim 5 that initially depended from now cancelled original claim 1. Support can also be found in the Specification in Tables 2-4.

Claims 2 and 18 have been amended by inserting “9-[4-hydroxy-2-(hydroxymethyl)butyl]guanine” which is the formal name for the antiviral H2G. Support for this amendment can be found in the Specification at column 3, lines 66-67.

Claims 2 and 18 have also been amended by inserting the terms “active” and “ingredient.” Support for this amendment can be found in the Specification at column 5, lines 19-20.

Claims 2, 4, 18 and 20 have been amended to recite particular antivirals and/or glucocorticoids and to define “synergistic”. Support for the definition of “synergistic” can be found throughout the application, but in particular at column 6, lines 28-36, column 10, lines 54-63 and Figures 1-2.

Claims 2, 18 and 24 have also been amended by incorporating the limitation of “recurrent herpes virus infection” found in claims 26 and 32.

Claims 16, 24, 27, 29 and 31 have been amended to correct dependencies in view of the canceled claims.

Claims 8-10 and 13-15 have been amended to harmonize the dependent claims with the transitional phrase “consisting essentially of” found in claim 2.

No new matter has been added.

Rejections Under 35 U.S.C. § 112, first paragraph

In the Office Action issued March 4, 2005, the Examiner rejected claims 1, 3 and 16-40 for lack of enablement. In the Amendment filed July 13, 2005, Applicants canceled claims 1, 3, 17 and 19. Applicants also amended claims 18 and 24, deleting reference to “prophylaxis” and inserting the language suggested by the Examiner.

Applicants addressed these rejections in the Amendment filed July 13, 2005. To summarize, even though Levin's Examples 20, 32 and 43 discuss acyclovir and hydrocortisone or an ester, the instant invention is still distinguishable. Specifically, the instant claims recite the transitional phrase "consisting essentially of" and are limited to active ingredients consisting of at least one particular antiviral and at least one particular glucocorticoid. Levin's invention is the combination of the active ingredient LYCD and an additional medicinal agent. That is, LYCD is a required active ingredient. The instant claims are limited to particular antiviral and glucocorticoid active ingredients and so exclude LYCD which is not a member of the recited antiviral or glucocorticoid active ingredient groups. Moreover, as stated by Dr. Spruance in his Declaration, a skilled artisan would not have a reasonable expectation of success for combinations of the antivirals and glucocorticoids disclosed in Levin's Examples without LYCD being present.

Likewise, with respect to Smith and Underwood, with or without Chemical Abstract 103:172328, and again as stated by Dr. Spruance in his Declaration, a skilled artisan would not have a reasonable expectation of success and would furthermore lack the motivation to combine these two references in the first place.

Conclusion

In view of the above remarks, all the claims remaining in the case as amended, including newly added claims, are submitted as defining non-obvious, patentable subject matter. Reconsideration of the rejections and allowance of the claims are respectfully requested.

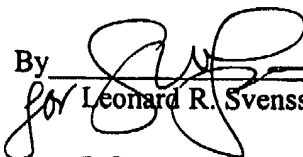
Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Leonard R. Svensson (Reg. No. 30,330) at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

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LRS/SWG
1718-0214P

Attachment(s): PTO 1449

Harmenberg manuscript "ME-609: A treatment for recurrent herpes simplex virus infections.

Harmenberg et al. (2003) *Antiviral Chemistry & Chemotherapy* 14:205-215.

Evans et al. (2002) *Antimicrobial Agents and Chemotherapy* 46:1870-1874.